

Assembly Bill No. 394

CHAPTER 297

An act to amend Section 12956.1 of, and to add Section 12956.2 to, the Government Code, relating to housing.

[Approved by Governor September 22, 2005. Filed with
Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 394, Niello. Housing: discrimination.

Existing law prohibits discrimination in housing through restrictive covenants based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry and provides that discrimination in housing through a restrictive covenant includes the existence of a restrictive covenant regardless of whether accompanied by a statement that the covenant is repealed or void.

Existing law authorizes a person who holds an ownership interest of record in property that he or she believes is the subject of a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, to file an application with the Department of Fair Employment and Housing requesting a determination of whether the restrictive covenant violates the fair housing laws and is void. Existing law requires the department to provide the applicant with a written statement entitled "RACIALLY OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICATION" if the department determines that the document contains a restrictive covenant that violates the law. Existing law authorizes the applicant to strike out a void restrictive covenant identified by the department, complete and attach a copy of the written statement from the department to the front of the document, and cause the modified document to be recorded if all other requirements of recordation are met, including the payment of any recordation fee.

This bill would delete the provisions authorizing a person to file an application with the Department of Fair Employment and Housing, requiring the department to respond, and authorizing the person to strike out the restrictive covenant, attach a statement to the document, and record the modified document. The bill would instead authorize a person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry, to record a document titled Restrictive Covenant Modification, which would include a copy of the original document with the illegal language stricken. The bill would

impose a state-mandated local program by requiring a county recorder to make available to the public forms for restrictive covenant modification.

The bill would require the county recorder before recording the modification document to submit the modification document and the original document to the county counsel who would be required to determine whether the original document contains an illegal restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry. The bill would require the county counsel to return the documents and inform the county recorder of its determination. These new duties would impose a state-mandated local program on the county recorder and county counsel.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 12956.1 of the Government Code is amended to read:

12956.1. (a) As used in this section, “association,” “governing documents,” and “declaration” have the same meanings as set forth in Section 1351 of the Civil Code.

(b) (1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

“If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(c) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The

county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

SEC. 2. Section 12956.2 is added to the Government Code, to read:

12956.2. (a) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record a document titled Restrictive Covenant Modification. The county recorder may choose to waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of the modification document provided for in this section. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the original document contains an unlawful restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination. The county recorder shall refuse to record the modification document if the county counsel finds that the original document does not contain an unlawful restriction as specified in this paragraph.

(c) The modification document shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number, and date of the recording.

(d) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(e) The county recorder shall make available to the public Restrictive Covenant Modification forms.

(f) If the holder of an ownership interest of record in property causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the holder of the ownership interest of record who caused the modified recordation.

(g) This section does not apply to persons holding an ownership interest in property that is part of a common interest development as defined in subdivision (c) of Section 1351 of the Civil Code if the board of directors of that common interest development is subject to the requirements of subdivision (b) of Section 1352.5 of the Civil Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because the local agency or school district has the authority to levy services charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.